

**Statement of Jeffrey R. Holmstead
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**Implications of EPA's Proposed National Ambient Air Quality
Standards (NAAQS) for Fine Particles (PM_{2.5})**

**Energy and Commerce Committee
Subcommittee on Energy and Power
U.S. House of Representatives
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Mr. Chairman and Members of the Subcommittee, thank you for giving me the opportunity to testify before you today. My name is Jeff Holmstead. I am a partner in the law firm of Bracewell & Giuliani and the head of the firm's Environmental Strategies Group. Today, however, I am not appearing on behalf of my law firm or any of my firm's clients. I am here to provide my own views as a former official in both the Environmental Protection Agency (EPA) and the White House who has spent more than 20 years working on Clean Air Act issues. I am here to talk about some of the major implications of EPA's recent proposed rule to lower the national ambient air quality standards (NAAQS) for "fine particulates," which are generally referred to as PM_{2.5}.

Since 1989, I have spent my professional life working on Clean Air Act issues. From 1989 to 1993, I served on the White House Staff as an Associate Counsel to President George H. W. Bush. In that capacity, I was deeply involved in the Administration's efforts to seek passage of and then implement the 1990 Amendments to the Clean Air Act. From 2001 to 2005, I served as the head of EPA's Air Office. Before and after my tenure at EPA, I have been an attorney in private practice and have counseled many different companies on Clean Air Act compliance issues. From many different perspectives, I am familiar with the regulatory implications of implementing a new NAAQS.

My primary concern about the new proposed standards is that EPA is not being fully honest about the burden it will impose on state and local governments, companies and businesses, and American consumers. EPA is not, or at least should not be, just another advocacy group waging a public relations campaign. The Agency and its officials should be open and honest about the implications of its regulatory actions.

1. EPA suggests that the new standards will impose very little burden because it has done computer modeling which finds that most of the country will achieve the new standards by 2020. But this is not how the Clean Air Act works. Under the statute, EPA is required to decide, based on current air quality data, whether an area meets or does not meet the standard. Areas that do not currently meet the standard, and other nearby areas

that “contribute” to exceedances of the new standard, must be designated as “non-attainment” areas.

2. By statute, this designation process must be finished by 2014. The fact that some or even most areas may meet the standards by 2020 is not relevant.
3. Once an area is designated as nonattainment, there is essentially a ban on the construction of new industrial or manufacturing facilities in this area, and it becomes very difficult even to expand existing facilities. This happens immediately because of new permitting requirements.
4. It also becomes even more difficult to build new roads or other transportation projects in areas that are designated as “nonattainment.”
5. EPA also fails to discuss the implications of two key aspects of its proposal that will increase – and may dramatically increase – the cost of meeting the new standard
 - A. A requirement to place new monitors near busy roads, along with the elimination of area-wide averaging, so that attainment will be based on the highest monitored concentrations in the area. EPA has not tried to estimate how much more “stringent” these changes will make the standard, and this change is not even addressed in the Agency’s modeling.
 - B. A new secondary standard designed to improve visibility in urban areas. This requirement will also make the standard much more stringent than EPA suggests.

If EPA believes in its modeling results, it should support a statutory change that would eliminate new regulatory burdens that, according to EPA, will not be necessary to meet the standards by 2020. Under such an approach, only a few counties identified by EPA would need to worry about the current requirements for nonattainment areas. All other parts of the country, according to EPA, will meet the new standards by 2020 and do not need to be burdened by additional regulations.